

## ARKANSAS COURT OF APPEALS

DIVISION III  
No. CA08-701

NATHAN WOODRUFF  
APPELLANT  
  
V.  
  
SHAVER FOODS, L.L.C. and CYPRESS  
INSURANCE COMPANY  
APPELLEES

**Opinion Delivered** January 7, 2009

APPEAL FROM THE ARKANSAS  
WORKERS' COMPENSATION  
COMMISSION  
[NO. 611866]

AFFIRMED

### LARRY D. VAUGHT, Chief Judge

Nathan Woodruff appeals the decision of the Workers' Compensation Commission, finding that he failed to prove that he sustained a compensable low back injury on July 19, 2006. We affirm.

Woodruff's sole point on appeal is that substantial evidence fails to support the Commission's decision. In reviewing decisions from the Commission, we view the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Commission's findings, and we affirm if the decision is supported by substantial evidence. *Parker v. Comcast Cable Corp.*, 100 Ark. App. 400, \_\_\_ S.W.3d \_\_\_ (2007). Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Id.* When an appeal is taken from the denial of a claim by the Commission, the substantial-evidence standard of review requires that we affirm if the Commission's decision displays a substantial basis for the denial of relief. *Id.*

To receive workers' compensation benefits, a claimant must establish (1) that the injury arose out of and in the course of the employment, (2) that the injury caused internal or external harm to the body that required medical services, (3) that there is medical evidence supported by objective findings establishing the injury, and (4) that the injury was caused by a specific incident and identifiable by the time and place of the occurrence. Ark. Code Ann. § 11-9-102(4) (Supp. 2007). Compensation must be denied if the claimant fails to prove any one of these requirements by a preponderance of the evidence. *Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997). Questions concerning the credibility of witnesses and the weight to be given their testimony are within the exclusive province of the Commission. *White v. Gregg Agric. Ent.*, 72 Ark. App. 309, 37 S.W.3d 649 (2001). Once the Commission has decided an issue of credibility, we are bound by that decision. *Logan County v. McDonald*, 90 Ark. App. 409, 206 S.W.3d 258 (2005).

Woodruff testified that on July 19, 2006, while working for appellee Shaver Foods, L.L.C., he fell and injured his low back. According to Woodruff, his fellow employee, Alan Clay Kilpatrick, was handing Woodruff boxes of spaghetti sauce, which he was carrying on his shoulders. He had one box on his left shoulder and two on his right. When Woodruff stepped back, his right heel hit a pallet, causing him to fall. He testified that he reported the fall to his supervisor, Brannon Nix, that evening.

When Woodruff awoke the next morning with back pain, he testified that he called Nix to advise that he was going to seek medical attention. Woodruff sought treatment from Dr. William Kendrick, who recommended an MRI and took Woodruff off work until July

31, 2006. Woodruff testified that he called Nix again to report the result of his visit with Dr. Kendrick.

On July 31, 2006, Woodruff returned to Dr. Kendrick. Dr. Kendrick opined that Woodruff suffered a herniated nucleus pulposus at L4–5 on the left and right, restricted him from work another thirty days, and referred him to a neurosurgeon. Woodruff testified that he called Nix that day to report this information. Woodruff was seen by neurosurgeon Dr. Regan Gallaher on August 29, 2006, who recommended surgery, which was performed September 15, 2006. Woodruff said that he reported his need for surgery to Nix and that it was Woodruff's understanding that his job at Shaver Foods would be available once he was released to return to work. Woodruff was released to return to work on November 8, 2006. However, when he contacted Nix about returning to work, Woodruff was told that he was terminated for violating the "no show-no call" policy at Shaver Foods.

Kilpatrick testified that on July 19, 2006, he was working with Woodruff. However, Kilpatrick testified that he neither saw nor heard Woodruff's fall. Kilpatrick also said that if Woodruff had fallen, he (Kilpatrick) would have heard it. Finally, Kilpatrick testified that Woodruff never reported the incident to him.

Nix testified that he frequently received calls on his cell phone from his employees, including Woodruff. While Nix admitted that Woodruff may have called him on July 19 and 20, Nix denied that Woodruff called him on those dates reporting a fall or a work injury.

In finding against Woodruff, the Commission did not believe his testimony. Instead, the Commission believed Kilpatrick's testimony that he did not see or hear Woodruff's fall,

even though he was in close proximity to Woodruff at the time; that he would have heard the three boxes of spaghetti sauce crash to the ground if Woodruff had fallen; and that Woodruff did not mention that he suffered an injury that night. The Commission also gave greater weight to Nix's testimony than Woodruff's. The Commission believed Nix's testimony that Woodruff never reported any fall or injuries. The Commission further found that the cell-phone records, which confirmed that Woodruff made calls to Nix on relevant dates, were not "overly supportive" of Woodruff's testimony because there was evidence that employees often called Nix on his cell phone. Woodruff testified that he called Nix on his cell phone "all the time," and the cell-phone records of July 19 reflected that Woodruff called Nix before and after the alleged incident.

The Commission also pointed to medical evidence that called Woodruff's credibility into question. The Commission found that the July 20 medical record failed to support Woodruff's claim of a work-related injury. In that record, Dr. Kendrick stated that Woodruff made a chief complaint of low back pain with a history of onset of "14 days" ago and further made no mention of a work injury or any other type of injury occurring the day before. While the Commission noted that Dr. Kendrick did, eleven days later, state that Woodruff had been hurt at work, the Commission discounted this report because it was prepared after it was learned that Woodruff suffered two herniated discs.

The Commission denied Woodruff's claim based on the above findings. The credibility findings made by the Commission have the full force and effect of a jury verdict. *Hooks v. Gaylord Container Corp.*, 67 Ark. App. 159, 992 S.W.2d 844 (1999). In addition to the

credibility findings, the Commission cited supporting medical evidence. We hold that these findings constitute substantial evidence supporting the Commission's decision.

Finally, we note that there are other facts in this case that support Woodruff's claim for compensation: the cell-phone records demonstrating that Woodruff called Nix on relevant dates; Woodruff's termination within six days after he formally filed for workers' compensation benefits; medical records demonstrating objective findings of a low back injury; Dr. Kendrick's July 31, 2006 report that noted Woodruff's fall at work; and the testimony of co-employee Joseph Upton, who corroborated Woodruff's testimony. However, the question on appeal is not whether the evidence would have supported findings contrary to those made by the Commission, but only whether the Commission's decision is supported by substantial evidence. *Smith-Blair, Inc. v. Jones*, 77 Ark. App. 273, 72 S.W.3d 560 (2002). Despite these other facts, under our standard of review, we hold that reasonable minds could reach the result found by the Commission. Therefore, we must affirm.

Affirmed.

MARSHALL and BAKER, JJ., agree.